

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SHIN-EI BOEKI, LTD.

v.

SCOTT KAJIYA, MICHAEL W. BINGHAM,
CARY BRIGGS, SIGN LANGUAGE EYEWEAR,
INC. d/b/a SIGN LANGUAGE HABITAT,
and Si SCOOTER WORKS, INC.

CIVIL ACTION

NO. 1:00-cv-02241

(Judge Kane)

**BRIEF IN SUPPORT OF PLAINTIFF SHIN-EI BOEKI, LTD.'S RESPONSE TO
ORDER TO SHOW CAUSE DATED APRIL 25, 2003**

I. INTRODUCTION AND PROCEDURAL HISTORY

This civil action was assigned by United States District Judge Kane to United States Magistrate Judge Smyser with the consent of plaintiff and defendant Scott Kajiya, the only two parties presently represented by counsel. At a conference before Judge Smyser, the issue of 28 U.S.C. §636(c) consent was discussed and a plan/timetable was put in place for the parties to attempt to gain consent. Alternatively, the possibility of the dismissal of individual parties was discussed.

By letter dated April 17, 2003 plaintiff, through its counsel, informed Judge Smyser that the consent of all parties could not be gained. Shortly thereafter, on April 25, 2003 plaintiff filed a motion to dismiss all claims and counterclaims pursuant to Fed. R. Civ. P. 41(a)(2).

On April 25, 2003 Judge Smyser issued a show cause order why this case should not be reassigned to Judge Kane for the reason that there is not 28 U.S.C. §636(c) consent of all of the parties.

II. ISSUE

A. Whether a civil action can proceed before a United States Magistrate Judge when there is not 28 U.S.C. §636(c) consent of all of the parties.

Suggested answer: No.

III. ARGUMENT

The jurisdiction of a United States Magistrate Judge for purposes of trial and/or dispositive motions requires the consent of all of the parties. 28 U.S.C. §636(c). Where the consent of all parties is lacking, such jurisdiction by a United States Magistrate Judge is inconsistent with the Federal Rules of Civil Procedure as well as the laws of the United States 28 U.S.C. §636. In that event, reassignment to a district judge is proper.

IV. CONCLUSION

For the reasons set forth in the annexed response, and as set forth herein, this civil action should be reassigned to United States District Judge Kane.

Respectfully submitted,

SILVERMAN BERNHEIM & VOGEL

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CERTIFICATE OF SERVICE

I, Jonathan S. Ziss, hereby certify that on April 29, 2003 I caused a true and correct copy of the Foregoing Response of Plaintiff Shin-Ei Boeki, Ltd. To Order to Show Cause Dated April 25, 2003 with accompanying Memorandum of Law to be served, via United States first-class mail, postage prepared addressed as follows:

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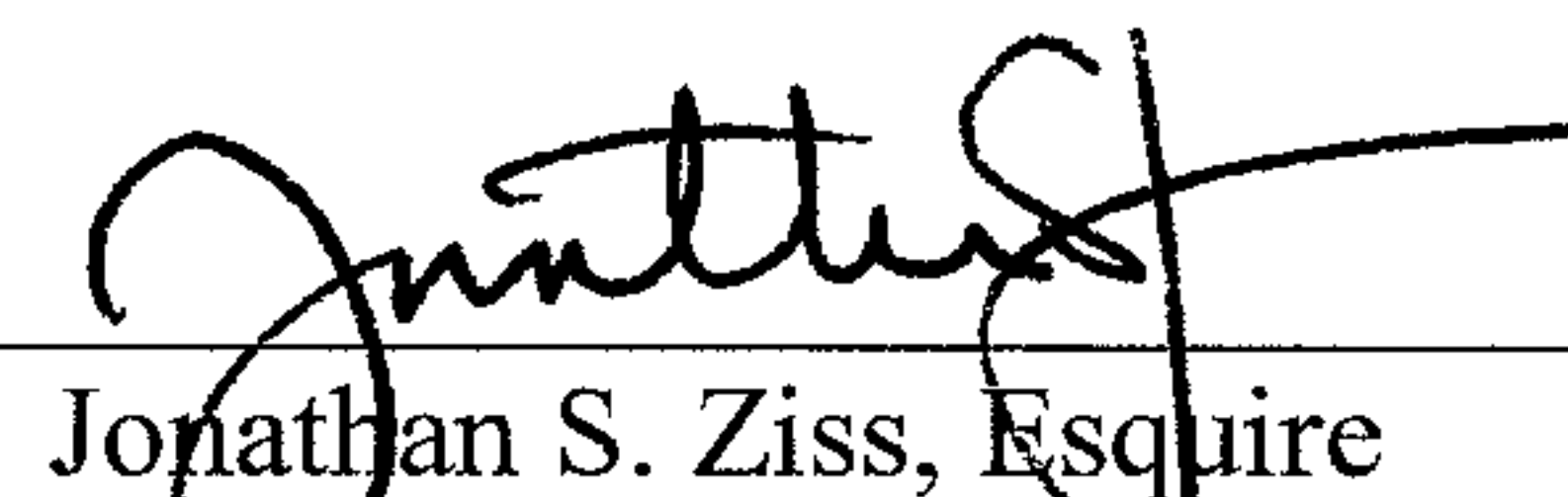
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